

DD/A Registry

76-1965

19 APR 1976

MEMORANDUM FOR: Legislative Counsel

STAT

ATTENTION :

FROM :

Robert W. Gambino
Director of Security

SUBJECT :

Representative Bella Abzug's Letter
Regarding Classification Criteria

REFERENCE :

Request for Comments from Legislative
Counsel, dated 7 April 1976, Same Subject

Office of Security comments pertaining to Representative Abzug's response dated 26 March 1976 are as follows:

Question 2: The statement in [] that "all information, classified or unclassified, received, compiled, or created by the CIA (except personal copies of unclassified personnel papers) is official data and the property of the U. S. Government" is probably too broad and there may be no basis in law for this statement as it now reads. Perhaps the statement should be revised to state that "information received, compiled, or created by the CIA which is classified under the provisions of Executive Order 11652; which contains intelligence sources and methods; or which is privileged or proprietary is official data and the property of the U. S. Government." STAT

Question 3: As far as we know, CIA has issued no instructions augmenting the general policy statements in Executive Order 11652 for determining whether official information requires protection against unauthorized disclosure.


Question 6b: Except for the general administrative burden of designating classification authority in writing, we know of no details of problems which have occurred in CIA.

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Class Corres.

Question 14: We defer to the Office of General Counsel
and have no comment on this question.

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Robert W. Gambino

cc: EO/DDA



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USE ONLY



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SECRET

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

STAT

FROM:

EXTENSION

NO.

STAT

Assistant Legislative Counsel

DATE

7 APR 1976

STAT

TO: (Officer designation, room number, and building)

DATE

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1.

DDA 7C18

8 APR 1976

STAT

Attached for your review is a letter from Chairwoman Abszug requesting further information to that previously provided to her in our letter of 1 March 1976 regarding the application of EO 11652, to CIA operations.

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Your written comments by COB 14 April, will be appreciated.

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225-3741

NINETY-FOURTH CONGRESS
Congress of the United States
House of Representatives

GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS
SUBCOMMITTEE

OF THE

COMMITTEE ON GOVERNMENT OPERATIONS

RAYBURN HOUSE OFFICE BUILDING, ROOM B-349-B-C
WASHINGTON, D.C. 20515

March 26, 1976

Executive Registry

75-11848/1

01176-0861

Honorable George Bush
Director
Central Intelligence Agency
Washington, D.C. 20505

Dear Mr. Bush:

Thank you for your response of March 1, 1976 to questions we sent on September 26, 1975 regarding the application of security classification policy in Executive Order 11652 to CIA operations.

Comments you supplied regarding ~~four of our questions~~ seem to require further attention. Would you please furnish us additional information as requested below:

Question 2: The Agency's response to the question regarding the criteria for determining whether an item of information is "official information" and subject to possible classification, shows that all information received by CIA, including classified information, is considered by it to be "official data and the property of the U.S. Government."

What is the basis in law for CIA to state that each of the types of information referred to below becomes property of the U.S. Government and subject to classification as Confidential, Secret, or Top Secret under Executive Order 11652?

- (a) Information published under a copyright.
- (b) Information received by CIA from an individual who has already made this information known to others without secrecy restriction.
- (c) Information received by CIA from an individual who can be expected to make it known to others without secrecy restriction.

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- (d) Privately generated information received by CIA from an individual who assigned a marking of Confidential, Secret, or Top Secret to it without any authorization from a Federal agency, and who has disseminated or can be expected to disseminate the information outside of U.S. Government channels.
- (e) Information received by CIA regarding people, organizations, or things which does not lend itself to the secrecy control procedures in Executive Order 11652 for information requiring protection against unauthorized disclosure.

Question 3: The question requested a statement of criteria established by CIA for its use in determining whether items of official information require protection under Executive Order 11652 against unauthorized disclosure in the interest of the national defense of the United States. (Use of the term "national defense" reflects the fact that the Freedom of Information Act, 5 U.S.C. 552(b)(1), makes a distinction between "national defense" and "foreign policy". Executive Order 11652 also uses the term "national defense".)

Your reply did not cite any criteria established by CIA, or otherwise respond to this question. CIA regulation [] which your letter referred to as containing classification criteria and guidance for intelligence sources and methods information, provides nothing other than the general classification policy promulgated in Executive Order 11652 for all agencies. STAT

Apparently, the CIA has no instructions specifying the type of damage to the national defense that the Agency should strive to preclude through use of the classification system. Nor is there any indication that CIA has placed restrictions on using the designations "intelligence source" and "intelligence method" as catch-alls for keeping information secret.

If CIA has in fact issued instructions which augment the general policy statements in Executive Order 11652 for determining whether official information requires protection against unauthorized disclosure to preclude damage to the national defense, please furnish them to this Subcommittee.

Question 6b: This question referred to the requirement in Executive Order 11652 that authority to assign information to a classification category be exercised only by officials who are properly designated in writing. According to the CIA's reply, CIA considers that restriction to be unsatisfactory for the performance of its functions and responsibilities.

Your answer is truly amazing. People everywhere are deeply concerned about the fact that procedures currently promulgated in Executive Order 11652 permit the designation of many thousands of government officials to exercise censorship authority over information which rightfully belongs to the public. This Subcommittee is reexamining its support of the provisions

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in subsection (b)(1) of the Freedom of Information Act which validate existing classification policy in the Executive Order, including the widespread delegation of classification authority.

Will you please furnish this Subcommittee:

- (a) The details of such problems as have occurred in CIA since the effective date of Executive Order 11652 (June 1, 1972), due to the fact that classification authority may only be exercised by officials designated in writing pursuant to the order; and
- (b) Your recommendations for policy on the question of exercising classification authority which Congress could include in security classification reform legislation.

Question 14: The response to this question shows that the CIA strives to protect information revealing intelligence sources and methods even when the information does not qualify for classification and protection under Executive Order 11652 in the interest of the national defense or foreign relations. As indicated by the last sentence of your answer, all information that could be considered as revealing some sort of intelligence source or some sort of intelligence method apparently is viewed as having been born into secrecy and can be released only if CIA regulations specifically permit disclosure.

Before sending you our letter, we had been advised that section 9 of Executive Order 11652 provides for protecting intelligence sources and methods under the security classification system if protection is necessary. Section 9 provides: "The originating department or other appropriate authority may impose, in conformity with the provisions of this order, special requirements with respect to access, distribution and protection of classified information and material, including those which presently relate to communications intelligence, intelligence sources and methods and cryptography."

Our question 14 reflected the possibility that the President might have issued revised instructions without publishing them. But after we reviewed the President's recent recommendations for criminalizing unauthorized disclosures of intelligence sources and methods (embodied in [redacted]), we concluded that no change in Executive Order 11652 had been made, since his proposed legislation would only protect sources and methods information assigned a security classification pursuant to an Executive Order. STAT

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Therefore, would you advise us whether CIA regulations do in fact prescribe criteria and procedures for protecting non-classified intelligence sources and methods, and, if so, please send us a copy.

Sincerely,

A handwritten signature in cursive script, reading "Bella S. Abzug".

BELLA S. ABZUG
Chairwoman

1976-03-26 10:10 AM